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May 31, 2023

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**By ECF**

Hon. Mary Kay Vyskocil  
United States District Judge  
U.S. District Court, Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: Joint Letter Requesting Settlement Conference and Extension  
of Pre-Trial Deadlines, Responding to Order to Show Cause,  
and Addressing Topics Listed in Paragraph 16 of the  
Court's Civil Case Management Plan and Scheduling Order  
*Dyson, Inc., et al. v. Kuehne + Nagel Inc.*  
*v. MSC Mediterranean Shipping Company S.A.*  
Docket No.: 22-cv-1568 (MKV) (SN)

Dear Judge Vyskocil:

We represent Plaintiffs, Dyson, Inc. ("Dyson"), Factory Mutual Insurance Company ("Factory Mutual"), and Affiliated FM Insurance Company ("Affiliated FM") in the above-referenced action. With the consent of Defendant / Third-Party Plaintiff, Kuehne + Nagel d/b/a Blue Anchor America Line ("K+N"), and Third-Party Defendant, MSC Mediterranean Shipping Company S.A. ("MSC"), we submit this joint letter on behalf of the Parties.

The Parties had a productive three-hour settlement conference with Judge Netburn on May 26, 2023. While no settlement was reached, progress was made towards a negotiated settlement of all claims between all parties and thus this entire action. As offered by Judge

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Netburn, the Parties wish to have a further settlement conference to continue the settlement dialogue with Judge Netburn. Accordingly, the Parties respectfully request a further settlement conference. If acceptable to this Court, the Parties will proceed to forward three proposed dates in late July/early August for the further settlement conference to Judge Netburn's Courtroom Deputy in accordance with her settlement conference procedures.

In addition, and pursuant to Rule 2(G) of Your Honor's Individual Rules of Practice in Civil Cases, the Parties respectfully request a further sixty-day (60) extension of certain discovery and pre-trial deadlines provided for in the Scheduling Order dated October 17, 2022 [Dkt. 31] as amended on January 13, 2023 [Dkt. 34] and April 3, 2023 [Dkt. 36] ("the Scheduling Order"), and to adjourn the Status Conference, currently scheduled for **June 6, 2023, at 11:00 a.m.** [Dkt. 36].

The proposed new dates are set out below:

Scheduling Order	Description	Proposed Date
Item #5	Completion of Factual Discovery	August 18, 2023
Item #7(c)	Completion of Depositions	August 18, 2023
Item #8	Completion of Expert Discovery	October 20, 2023

This is the third request for an extension of certain deadlines in the Scheduling Order.

The instant request is submitted in utmost good faith and is not meant for purposes of delay. The parties will not be prejudiced by the proposed extension as evidenced by the fact that this is a joint request.

In response to the Court's Order to Show Cause issued today [ECF no. 40], all counsel respectfully apologize to the Court for not having submitted a joint letter yesterday. As the scheduled June 6 conference is a Status Conference prior to the close of fact discovery rather than a Post-Discovery Conference, it was unclear to counsel that the Court expected to receive a joint letter yesterday regarding topics that are to be addressed in a joint letter in advance of a Post-Discovery Conference. In this connection, we understand from the Court's

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form Civil Case Management Plan and Scheduling Order and the Court's Individual Rule 3(E) that a joint status letter addressing the topics listed paragraph 16 of the Court's form Civil Case Management Plan and Scheduling Order is to be submitted in advance of a Post-Discovery Conference, which is to occur after all discovery has closed. Further, the Court's Individual Rules of Practice in Civil Cases<sup>1</sup> do not discuss Status Conferences or the submission of joint letters in advance of Status Conferences.

The Parties and counsel have been focused on settlement discussions. After the settlement conference on Friday, May 26, and the Memorial Day holiday on Monday, May 29, on Tuesday, May 30, counsel began discussing the possibility of a second settlement conference as suggested by Judge Netburn. A draft letter substantially similar to the first two pages above was circulated and discussed amongst counsel yesterday, to be submitted at least 72 hours in advance of the June 6 conference in accordance with the Court's Individual Rule 2(G). Having confirmed the Parties' agreement today, the joint request above is being respectfully submitted for the Court's consideration.

The Parties also respond regarding the topics listed in paragraph 16 of the Civil Case Management Plan and Scheduling Order as follows, respectfully reserving the right to provide the Court with updated information prior to any Post-Discovery Conference or as the case progresses:

**a. statement of any existing deadlines, due dates, and/or cut-off dates;**

Scheduling Order	Description	Current Date
Item #5	Completion of Fact Discovery	June 16, 2023
Item #7(c)	Completion of Depositions	June 16, 2023
Item #8	Completion of Expert Discovery	August 18, 2023

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<sup>1</sup> It is noted that the version of Your Honor's Individual Rules of Practice in Civil Cases currently available at <https://nysd.uscourts.gov/hon-mary-kay-vyskocil> states that it was revised on July 17, 2020, while the hyperlink and file name include the date June 3, 2022.

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**b. a brief description of any outstanding motions;**

None.

**c. a brief description of the discovery and undertaken if either party believes any additional discovery that needs to be completed;**

There has been extensive written discovery and more than one thousand pages of Bates-stamped documents have been exchanged. The deposition of a corporate representative of Dyson, Inc. was completed. To conserve resources that could otherwise be used for settlement [*see* ECF no. 36 at 1], and as there were delays in coordinating mutually convenient dates, the depositions of corporate representatives and fact witnesses have not been conducted to date.

**d. a statement describing the status of any settlement discussions and whether the parties would like a settlement conference;**

As detailed above, Magistrate Judge Netburn kindly conducted a three-hour settlement conference this past Friday, May 26, 2023. As Judge Netburn offered to conduct a second settlement conference, the Parties are respectfully requesting one.

**e. a statement of the anticipated length of trial and whether the case is to be tried to a jury;**

The Parties' best estimate of the length of trial remains at three days. The case is not to be tried to a jury.

**f. a statement of whether any party anticipates filing a motion for summary judgment or a motion to exclude expert testimony (*see* Individual Practice Rules ¶4(A)(i));**

At this stage, prior to the close of fact discovery and the commencement of expert discovery, the Parties have not decided whether to file any motion for summary judgment or any motion to exclude expert testimony. The current deadline for parties with the burden of

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proof to serve expert disclosures is July 7, and opposing expert disclosures are due on July 28, 2023.

- g. any other issue that the parties would like to address at the conference; and**

None.

- h. any other information that the parties believe may assist the Court in advancing the case to settlement or trial.**

The Parties refer to their above request for a second settlement conference and an extension of certain deadlines in the Scheduling Order so that resources can be conserved for possible settlement rather than further litigation.

All counsel again apologize for not having submitted a joint letter yesterday, and thank Your Honor for consideration of the Parties' requests.

Respectfully submitted,

HILL RIVKINS LLP

*Brian P.R. Eisenhower*

Brian P. R. Eisenhower

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cc: **By ECF**  
All Counsel of Record

**The adjournment request is DENIED. SO ORDERED.**

Date: 5/31/2023  
New York, New York

*Mary Kay Vyskocil*  
Mary Kay Vyskocil  
United States District Judge